

1 The Honorable Judge Richard A. Jones
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 PATRICIA COLE-TINDALL, in her official)
9 capacity as the King County Sheriff; and KING) No. 2:24-cv-00325-RAJ
10 COUNTY, a home rule charter county,)
11 Plaintiff,) DECLARATION OF ANN SUMMERS
12 vs.) IN OPPOSITION TO DEFENDANT'S
13 Defendant.) MOTION TO DISMISS PURSUANT
) TO FED. R. CIV. P. 12(b)(1)
14

15 I, Ann Summers, declare as follows:

16 1. I am over eighteen years of age. I have personal knowledge of the facts contained in
17 this declaration and am otherwise competent to testify to the matters in this declaration.

18 I am a Senior Deputy Prosecuting Attorney for King County and represent Plaintiffs in
19 this matter.

20 2. On May 13, 2024, I search the City of Burien website at <https://www.burienwa.gov> for
21 the Burien Municipal Code. A true and correct copy of Burien Municipal Code Chapter
22 9.85 et seq. as appearing on the City of Burien's website on May 13, 2024, is attached
23 as Exhibit A.

1 I declare under penalty of perjury under the laws of the United States of America and the
2 State of Washington that the foregoing is true and correct.

3 Signed this 13th day of May, 2024, at Seattle, Washington.

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5 ANN M. SUMMERS

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Exhibit A

Chapter 9.85
PROPERTY, CRIMES RELATING TO Revised 11/23

Sections:

- 9.85.010** **Theft of rental, leased, lease-purchased, or loaned property.**
- 9.85.100** **Trespass and prowling – Adopted by reference.**
- 9.85.105** **Vehicle trespass prohibited – Penalty.**
- 9.85.150** **Unlawful public camping.** Revised 11/23
- 9.85.200** **Theft and possession of stolen property – Adopted by reference.**
- 9.85.300** **Roadside stands – Adopted by reference.**
- 9.85.400** **Political signs and posters – Adopted by reference.**
- 9.85.500** **Throwing objects at moving vehicles.**
- 9.85.600** **Attempted forgery.**
- 9.85.610** **Definitions – Fraud.**

9.85.010 Theft of rental, leased, lease-purchased, or loaned property.

(1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented, leased, or loaned by written agreement to the person, is guilty of theft of rental, leased, lease-purchased, or loaned property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

- (a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within 72 hours after receipt of proper notice following the due date of the rental, lease, lease-purchase, or loan agreement; or
- (b) That the renter, lessee, or borrower presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental, lease, lease-purchase, or loan period, mailed by certified or registered mail to the renter, lessee, or borrower at: (a) the address the renter, lessee, or borrower gave when the contract was made; or (b) the renter, lessee, or borrower's last known address if later furnished in writing by the renter, lessee, borrower, or the agent of the renter, lessee, or borrower.

(4) Theft of rental, leased, lease-purchased, or loaned property is a gross misdemeanor.

(5) The crime of theft of rental, leased, lease-purchased, or loaned property may be deemed to have been committed either at the physical location where the written agreement for the rental, lease, lease-purchase, or loan of the property was executed under subsection (1) of this section, or at the address where proper notice may be mailed to the renter, lessee, or borrower under subsection (3) of this section.

(6) This section applies to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any

minimum rental fee, to lease agreements, to lease-purchase agreements as defined under RCW 63.19.010, and to vehicles loaned to prospective purchasers borrowing a vehicle by written agreement from a motor vehicle dealer licensed under Chapter 46.70 RCW. This section does not apply to rental or leasing of real property under the residential landlord-tenant act, Chapter 59.18 RCW. [Ord. 611 § 1, 2014]

9.85.100 Trespass and prowling – Adopted by reference.

The following sections of the Washington Criminal Code, as now in effect, and as may subsequently be amended, are adopted by reference to establish the crimes of trespass and prowling under the Burien criminal code:

RCW

9A.52.010 Definitions.

9A.52.060 Making or having burglar tools.

9A.52.070 Criminal trespass in the first degree.

9A.52.080 Criminal trespass in the second degree.

9A.52.090 Criminal trespass – Defenses.

9A.52.100 Vehicle prowling in the second degree.

9A.52.120 Computer trespass in the second degree.

9A.52.130 Computer trespass – Commission of other crime.

[Ord. 63 § 25, 1993]

9.85.105 Vehicle trespass prohibited – Penalty.

(1) A person is guilty of vehicle trespass if he or she knowingly enters or remains unlawfully in a vehicle belonging to another.

(2) As used in this section:

(a) The word “enter” shall include the entrance of the person, or the insertion of any part of his or her body, or any instrument or weapon held in his or her hand.

(b) A person enters or remains unlawfully in or upon a vehicle when he or she is not licensed, invited, or otherwise privileged to so enter or remain.

(3) Vehicle trespass is a misdemeanor. [Ord. 562 § 3, 2012]

9.85.150 Unlawful public camping. Revised 11/23

(1) A person is guilty of unlawful public camping if that person uses nonresidential public property, as defined in this section, as a temporary or permanent dwelling, lodging, residence, or living accommodation, at any time between 7:00 p.m. and 6:00 a.m., except at places set aside, posted, or not explicitly prohibited for such purposes by the Burien city manager or designee, or by permit issued by the Burien city manager or designee. Camping, dwelling, lodging, residing, or living on nonresidential public property shall not be permitted in Burien except during the times stated immediately above.

(2) For this section, “nonresidential public property” means any street, sidewalk, Burien public park, or any other open area where Burien or another governmental agency has a property interest, including

easements. "Nonresidential public property" does not include apartments, houses, or other fixed residential living quarters owned or leased by Burien.

(3) Indicia of camping include, but are not limited to, bedding, cots, sleeping bags, tents or other temporary shelters, personal belongings storage, and cooking equipment use or storage.

(4) Unlawful public camping is a misdemeanor.

(5) A person is not guilty of unlawful public camping if there is no available overnight shelter when the person is on public property. "Available overnight shelter" means a public or private shelter with available overnight space, open to individuals experiencing homelessness at no charge. If the person cannot utilize an available overnight shelter due to voluntary actions such as intoxication, drug use, unruly or assaultive behavior, or violation of shelter rules, the overnight shelter space shall still be considered available for this section.

(6) The city manager shall have the permit authority noted above in addition to the emergency authority provided under Chapter 2.75 BMC and any other applicable laws, orders, rules, or equivalents.

(7) Given the sensitivity of this matter, the significance and impact of the unhoused, and the need to educate and inform the public, including the unhoused, this section will take effect on November 1, 2023.
[Ord. 827 § 1, 2023; Ord. 818 § 1, 2023]

9.85.200 Theft and possession of stolen property – Adopted by reference.

The following sections of the Washington Criminal Code, as now in effect, and as may subsequently be amended, are adopted by reference to establish the crimes of theft and stolen property under the Burien criminal code:

RCW

9A.56.010 Definitions.

9A.56.020 Theft – Definition, defense.

9A.56.050 Theft in the third degree.

9A.56.060 Unlawful issuance of checks or drafts.

9A.56.063 Making or possessing motor vehicle theft tools.

9A.56.100 Theft and larceny equated.

9A.56.140 Possessing stolen property – Definition – Access, devices, presumption.

9A.56.170 Possessing stolen property in the third degree.

9A.56.180 Obscuring identity of a machine.

9A.56.220 Theft of cable television services.

9A.56.230 Unlawful sale of cable television services.

9A.56.240 Forfeiture and disposal of device used to commit violation.

9A.56.260 Connection of channel converter.

9A.56.270 Shopping cart theft.

9A.56.330 Possession of another's identification.

[Ord. 737 § 1, 2020; Ord. 562 § 5 (Exh. A), 2012; Ord. 63 § 27, 1993]

9.85.300 Roadside stands – Adopted by reference.

The following sections of the King County Code, as now in effect, and as may subsequently be amended, are adopted by reference to establish crimes relating to roadside stands, except that references therein to the county shall also refer to the city under the Burien criminal code:

KCC

12.28.010 Unlawful to erect structures along roads.

12.28.020 Required distance from right-of-way.

12.28.030 Nuisance declared – Authority of engineer.

12.28.040 Violation – Misdemeanor.

[Ord. 63 § 75, 1993]

9.85.400 Political signs and posters – Adopted by reference.

The following sections of the King County Code, as now in effect, and as may subsequently be amended, are adopted by reference to establish regulations and crimes regarding political signs and posters, under the Burien criminal code:

KCC

12.74.010 Political signs allowed on private property.

12.74.020 Removal of signs following election.

12.74.030 Political signs not allowed on public property.

12.74.040 Public notices unaffected by chapter.

12.74.050 Penalty for violations.

[Ord. 63 § 80, 1993]

9.85.500 Throwing objects at moving vehicles.

Any person who throws, pushes, rolls, drops, swings or otherwise propels or projects any object, thing or substance in such a manner as to strike or be likely to strike any moving vehicle on the public highways or streets is guilty of a misdemeanor. [Ord. 63 § 85, 1993]

9.85.600 Attempted forgery.

(1) A person is guilty of the crime of attempted forgery if with the intent to commit the crime of forgery does intend to injure or defraud by:

(a) Falsely making, completing, or altering a written instrument; or

(b) Possessing, uttering, offering, disposing of or putting off as true, a written instrument which the person knows to be forged; and

(c) Does an act which is a substantial step toward the commission of that crime. [Ord. 562 § 1, 2012]

9.85.610 Definitions – Fraud.

The following section of the Washington Criminal Code, as now in effect, and as may subsequently be amended, is adopted by reference as definitions of fraud under the Burien criminal code:

RCW

9A.60.010 Definitions.

[Ord. 562 § 1, 2012]

[Mobile Version](#)